

The Honorable John C. Coughenour

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

KYLE GIANIS,

Defendant.

NO. CR04-334JCC

DECLARATION OF VINCENT T.  
LOMBARDI IN SUPPORT OF  
MOTION TO CONTINUE AND TO  
TAKE DEPOSITIONS

VINCENT T. LOMBARDI declares and states as follows:

1. I am the Assistant United States Attorney principally responsible for this matter, and am competent to make this Declaration based on personal knowledge.

2. I was the AUSA assigned to prosecute Adam Tsoukalas (CR04-273JCC) and David Youngberg (CR04-281JCC) in 2004. I am therefore competent to testify as to the background of that prosecution. The facts set forth in the background section of the government's motion are true and correct, and are incorporated by this reference.

3. As part of their guilty pleas, both Tsoukalas and Youngberg agreed to cooperate in the government's investigation and prosecution of Kyle Gianis, including testifying against him if necessary. In return, the government filed reduced charges (by way of information) against both gentlemen, and as a result they received much shorter sentences than they otherwise faced.

DECLARATION OF  
VINCENT T. LOMBARDI - 1  
(Gianis, CR04-334JCC)

UNITED STATES ATTORNEY  
700 Stewart Street, Suite 5220  
Seattle, Washington 98101-1271  
(206) 553-7970

1           4.     Both Tsoukalas and Youngberg have been returned to Canada, and are  
2 currently beyond the subpoena power of the United States.

3           5.     Based in large part on information provided by Tsoukalas and Youngberg,  
4 the United States indicted Kyle Gianis in this matter. It is my understanding that Gianis  
5 had traveled from Canada to Mexico. The Mexican government, discovering that there  
6 was an arrest warrant for Gianis, determined him to be undesirable and put him on the  
7 next flight out of the country. Unfortunately for Mr. Gianis, that flight landed in New  
8 York. Gianis was arrested in New York, NY in December of 2007.

9           6.     Since Mr. Gianis' appearance in this district, the case agent and I have  
10 made numerous attempts to determine whether Tsoukalas and Youngberg are willing to  
11 voluntarily appear and testify against Mr. Gianis.

12           7.     As to Mr. Youngberg, the case agent and I have each spoken with Mr.  
13 Youngberg's father. We have also spoken with Assistant Public Defender Nancy  
14 Tenney, who represented Youngberg. To date, we have not spoken directly with Mr.  
15 Youngberg himself. It is my understanding, based on those communications, that Mr.  
16 Youngberg may be willing to voluntarily appear and testify, although he is less than  
17 enthusiastic about the prospect.

18           8.     As to Mr. Tsoukalas, the case agent and I have recently been in contact  
19 with Mr. Tsoukalas' mother. She was quite hostile to the idea, accusing the United  
20 States government of having ruined her son's life. She also indicated that she feared  
21 for her son's safety if he testified. We asked her to have her son contact the  
22 undersigned. To date, that has not occurred.

23           9.     As an aside, there is some reason to believe that witnesses in this case  
24 may be subject to intimidation in Canada. Mr. Gianis is well known to law  
25 enforcement in British Columbia. His brother has been involved in at least one  
26 shooting incident. Mr. Gianis himself has also been involved in a very recent shooting  
27 incident, albeit as the "victim." An article from CBC News recounting the incident is  
28

DECLARATION OF  
VINCENT T. LOMBARDI - 2  
(Gianis, CR04-334JCC)

UNITED STATES ATTORNEY  
700 Stewart Street, Suite 5220  
Seattle, Washington 98101-1271  
(206) 553-7970

1 attached as Exhibit A.

2 10. Based in part on those facts, Mr. Gianis is currently detained at the FDC.  
 3 I know, based on past cases handled by our office, that the U.S. Marshals cannot  
 4 produce a detainee outside the United States. Accordingly, it will be necessary to  
 5 conduct the depositions by video conference to permit Mr. Gianis to participate, as  
 6 outlined in the government's motion. I know that this procedure has been used in past  
 7 cases handled in this district.

8 11. I have conferred with Jeffrey Olson, experienced counsel at the  
 9 Department of Justice's Office of International Affairs. Mr. Olson is assigned to the  
 10 Canada desk. Mr. Olson informs me that it should take approximately sixty days to  
 11 fully process a request to compel the depositions in Canada of the two witnesses.

12 12. On or about March 7, 2008, I spoke with John Henry Browne,  
 13 Mr. Gianis' retained defense counsel. Mr. Browne informed me that his client's  
 14 "Canadian lawyer" had been in contact with both Tsoukalas and Youngberg, and that  
 15 Mr. Gianis was quite confident that neither gentleman would appear to testify.  
 16 Mr. Browne also informed me that his client would not stipulate to their being deposed  
 17 in Canada.

18 The foregoing is true and correct under penalty of perjury,

19 DATED this 10th day of March, 2008.

20 Respectfully submitted,

21 JEFFREY C. SULLIVAN  
 22 United States Attorney

23 /s Vincent T. Lombardi  
 24 VINCENT T. LOMBARDI  
 25 WSBA # 21967  
 26 Assistant United States Attorney  
 27 United States Attorney's Office  
 28 700 Stewart Street, Ste. 5520  
 Seattle, Washington 98101  
 Facsimile: 206-553-4440  
 Phone: 206-553-5178  
 E-mail: vince.lombardi@usdoj.gov

DECLARATION OF  
 VINCENT T. LOMBARDI - 3  
 (Gianis, CR04-334JCC)

CERTIFICATE OF SERVICE

I hereby certify that on March 10, 2008, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the attorney(s) of record for the defendant(s). I hereby certify that I have served the attorney(s) of record for the defendant(s) that are non CM/ECF participants via telefax.

s/ Stephanie J. Orona  
STEPHANIE J. ORONA  
Legal Assistant  
United States Attorney's Office  
700 Stewart Street, Suite 5220  
Seattle, Washington 98101-1271  
Phone: 206-553-4228  
Fax: 206-553-0755  
E-mail: Stephanie.Orona@usdoj.gov

DECLARATION OF  
VINCENT T. LOMBARDI - 4  
(Gianis, CR04-334JCC)

UNITED STATES ATTORNEY  
700 Stewart Street, Suite 5220  
Seattle, Washington 98101-1271  
(206) 553-7970